

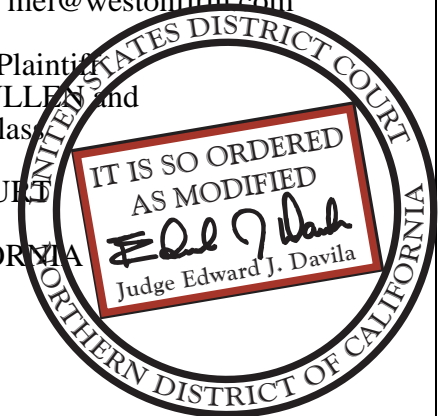
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DONALD CULLEN and  
the Putative Class

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION



DONALD CULLEN, on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

NETFLIX, INC.,

Defendant.

Case No. 5:11-cv-01199-EJD

**STIPULATION TO CONTINUE CASE  
MANAGEMENT CONFERENCE AND  
HEARING ON DEFENDANT'S  
MOTION TO DISMISS THE SECOND  
AMENDED COMPLAINT BY ONE  
WEEK; DECLARATION OF DAVID F.  
MCDOWELL**

**[L. R. 6-2, 7-12]**

Current Date: December 2, 2011

**Proposed Date: December 9, 2011**

Time: 10:00 a.m.

Judge: Hon. Edward J. Davila

Courtroom: 1

**STIPULATION AND [PROPOSED] ORDER**

Plaintiff Donald Cullen (“Plaintiff”) and defendant Netflix, Inc. (“Defendant”) (together, the “Parties”) hereby submit the following stipulated request to continue the case management conference and hearing on Defendant’s Motion to Dismiss the Second Amended Complaint by one week from December 2, 2011 to **December 9, 2011**:

WHEREAS —

1. On September 5, 2011, Plaintiff filed his Second Amended Complaint (Dkt. No. 26);

2. On October 5, 2011, Defendant filed its Motion to Dismiss the Second Amended Complaint (Dkt. No. 31), with the hearing noticed for December 2, 2011 per prior stipulation and order (Dkt. No. 24);

3. Because of an unavoidable court-ordered mandatory settlement conference in another case in the Southern District of Ohio, counsel for Netflix will be unable to attend the hearing and case management conference currently scheduled in this matter for December 2, 2011. As explained more fully in the attached Declaration of David F. McDowell, counsel for Netflix has attempted to change, but cannot, the date of the conflicting settlement conference;

4. The Parties respectfully request a modest one-week continuance of the conference hearing date to **December 9, 2011**;

5. Netflix has not previously requested a continuance of any hearing or conference in this matter.

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1 WHEREFORE, THE PARTIES HEREBY STIPULATE that the case management  
2 conference and hearing on Netflix's Motion to Dismiss the Second Amended Complaint be  
3 continued by one week from December 2, 2011, to **December 9, 2011**.

4 IT IS SO STIPULATED:

5 Dated: November 21, 2011 DAVID F. MCDOWELL  
6 JACOB M. HARPER  
MORRISON & FOERSTER LLP

7 By: /s/ David F. McDowell  
8 David F. McDowell  
9 Attorneys for Defendant  
NETFLIX, INC.

10 Dated: November 21, 2011 GREGORY S. WESTON  
JACK FITZGERALD

11 By: /s/ Jack Fitzgerald  
12 Jack Fitzgerald  
13 Attorneys for Plaintiff  
DONALD CULLEN

14 IT IS SO ORDERED

The Hearing and Case Management Conference are continued to January 6, 2012 at 9:00 AM  
and 10:00 AM respectively.

15 Dated: November 23 2011

16 By:   
17 Hon. Edward J. Davila  
18 UNITED STATES DISTRICT JUDGE  
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**DECLARATION OF DAVID F. McDOWELL**

I, David F. McDowell, state and declare:

1. I am a partner with Morrison & Foerster LLP, counsel of record for defendant Netflix, Inc. (“Defendant”) in the above captioned matter, and am a member in good standing of the State Bar of California. I submit this declaration in support of the parties’ Stipulation to Continue the Case Management Conference and Defendant’s Motion to Dismiss the Second Amended Complaint by One Week. I have personal knowledge of the statements set forth below, which are true and correct to the best of my knowledge, and I could and would testify to them.

2. I have been ordered to engage in a mandatory settlement conference in *Ehlers v. Restoration Hardware, Inc.*, S.D. Ohio Case No. 2:10-cv-01147, by December 5, 2011. Because of the number of parties and individuals involved, it has been extraordinarily difficult to schedule a date for this conference, and the only date available for the other parties and counsel to comply with the Court’s deadline is December 2, 2011. That date, however, creates a direct conflict with the case management conference and motion to dismiss hearing in this matter.

3. I have been unable to reschedule the mandatory settlement conference or obtain a continuance of the Court’s December 5 deadline.

4. Counsel for plaintiff Donald Cullen (“Plaintiff”) has agreed to continue the case management conference and hearing in this matter to December 9, 2011.

5. I respectfully request, therefore, a modest one-week continuance from December 2, 2011, to December 9, 2011, for the scheduled case management conference and hearing on Defendant’s motion to dismiss. I request this continuance in the interests of justice and believe this modest continuance would not unduly delay this matter.

6. Counsel has not previously sought a continuance of any hearing in this matter.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing statements are true and correct. Executed on November 21, 2011, in Los Angeles, California.

/s/ David F. McDowell  
David F. McDowell

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